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Supreme Court, U.S.

FILED

JUN 13 1988

JOSEPH E. SPANIOLO, JR.
CLERK

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1987

RICHARD G. KASCHAK,
Petitioner,

vs.

PINE MOUNTAIN CLUB PROPERTY
OWNERS ASSOCIATION,
Respondent,

ON PETITION FOR WRIT OF MANDATE
IN THE CALIFORNIA COURT OF APPEAL
FOR FIFTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

RICHARD G. KASCHAK
1928 Carmen Avenue
Hollywood, Calif.
90068
(213) 462-8803
Pro Se Petitioner

June 10, 1988

37 Pp



QUESTIONS PRESENTED

1. Can an appellate court permit foreclosure of lien on a veteran's homestead property without due process of law and equal protection as guaranteed by the United States Constitution and Amendments V, VI, and XIV?
2. Can an appellate court ignore Federal law and prima facie evidence and exhibits of Federal, HUD (Housing Urban Development) and State real property mandatory public report in determining legal contractual questions of law pertaining to rights and covenants of petitioner-homesteader as well as 3,000+ other property owners at this land development project?
3. Can an appellate court ignore uniformity decision California stare decisis law precedence of appellate districts; conflicts of decision which are violation of U.S.C. Amendment XIV?

4. Can courts & judges ignore witness abuse and non-compliance of lawful, legal court subpoena which required court attendance of an essential hostile witness (accountant) in order to prove and support petitioner's complaint and case? Is this witness deprivation a violation of due process and the U.S.C. Amendment XIV?

5. Whether courts and judges afford an in pro per (or pro se) petitioner the same procedural safeguards, rights, and privileges and justice of due process and equal protection as when a petitioner is represented by an attorney or counsel of repute? Is there a dual standard of justice and dignity as towards a petitioner in pro per?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Richard G. Kaschak, in 'pro per' and the respondents, Pine Mountain Club Property Owners Association, a supposedly non-profit association represented by their legal counsel and law firm of Monteleone & McCrory, and their attorney of record in this case to date, Debra Tilson Lambeck.

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED	i
LIST OF PARTIES . . . . .	.iii
OPINIONS BELOW.	1,2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY	
PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	6
REASONS FOR GRANTING THE WRIT.....	11
I. Deprivation and denial of procedural due process as is mandated by the due process clause and constitutional amendments V, VI, and XIV.....	
	11
II Federal Statutory Law is being ignored in the decisions below that brings cause for the exercise of the Supreme Court's supervisory powers which not only affect petitioner but possibly 3,000 or more property owners at this same land development.....	
	14
III There exists conflicts in principle as between the Fifth Appellate District and the Fourth Appellate District in the California Court of Appeal.....	
	17

IV. The Aims Of The Constitution Are The Enhancement Of The Dignity Of The Individual.....	20
("Inside The Marble Temple")	

CONCLUSION.....	22
-----------------	----

APPENDIX:

Superior Court Appellate Department, OPINION.....	1a
--	----

Court Of Appeal, Fifth Appellate District, WRIT OF MANDATE, DENIAL.....	6a
---	----

Supreme Court Of The State Of California, PETITION FOR REVIEW, DENIAL.....	7a
--	----

TABLE OF AUTHORITIES

Cases:	<u>Page</u>
Anti-Fascist Committee v. McGrath 341 U.S. 162.....	11
Chambers v. Mississippi 410 U.S. 284.....	13
Herb v. Pitcairn 324 U.S. 117.....	21
Hurtado v. Superior Court, 1974, 11 Cal 3d 574, 114 Cal Rptr 106.	19
Mathews v. Eldridge 424 U.S. 317.....	11

TABLE OF AUTHORITIES

Cases:	<u>Page</u>
Memphis Light v. Craft 436 U.S. 1.....	12
Mullane v. Central Hanover 339 U.S. 306.....	12
Palko v. Connecticut 302 U.S. 319.....	11, 14
Taylor v. Illinois 108 S.C. 646.....	13
Ticor Title Ins. Co. v. Rancho Santa Fe, 223 Cal Rptr 175, Cal App Fourth Dist, Div 1, 1986.....	7, 17, 19
Washington v. Texas 338 U.S. 14.....	13

OTHER AUTHORITIES

Fifth Amendment to United States Constitution.....	4, 14
Sixth Amendment to United States Constitution.....	4, 12, 14,
Fourteenth Amendment to United States Constitution....	4, 11, 12, 14, 20
Interstate Land Sales Disclosure Act United States Code Service.....	4, 14
Code Of Federal Regulations.....	5, 15
"Inside The Marble Temple" Justice William J. Brennan, Jr., 1988 Television Documentary.....	20

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1987

RICHARD G. KASCHAK,
Petitioner,

vs.

PINE MOUNTAIN CLUB PROPERTY
OWNERS ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOR THE FIFTH APPELLATE DISTRICT.

The petitioner, Richard G. Kaschak, respectfully prays that a writ of certiorari issue to review the denial for request for petition for writ of mandate of the California Court Of Appeal for the Fifth Appellate District, entered and filed in the above entitled proceeding on February 5, 1988.

The Supreme Court of the State of California denied petitioner's petition for review on March 16, 1988.

OPINIONS BELOW

The opinion of the Superior Court, State of California, County of Kern Appellate Department, is re-typed in the appendix hereto, page 1a, infra.

JURISDICTION

Petition to the Court Of Appeal of the State of California for the Fifth Appellate District was summarily denied on December 22, 1987. Petition For Rehearing and Finality of Judgment was dismissed on January 13, 1988.

Amended petition for writ of mandate was again filed to the Court Of Appeal of the State of California for the Fifth Appellate District and was denied on February 5, 1988.

Petition For Review of Decision Of The Court Of Appeal of the State of California for the Fifth Appellate District was made to the Supreme Court of the State of California on February 10, 1988. On March 16, 1988, the Supreme Court Of The State Of California, DENIED petitioner's petition for review.

This petition for certiorari is filed within 90 days of March 16, 1988, and the Supreme Court Of The United States jurisdiction is invoked under Title 28, United States Code, Chapter 81, Sec. 1257 (3).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

FIFTH AMENDMENT, United States Const:

"No person shall...be deprived of
life, liberty, or property, with-
out due process of law...."

SIXTH AMENDMENT, United States Const:

"...To have compulsory process
for obtaining witnesses in his
favor.....right to a speedy
and public trial by an impart-
ial jury of the State...."

FOURTEENTH AMENDMENT, United States Const:

"Section 1...nor shall any State
deprive any person of life,
liberty, or property without
due process of law...."

THE CODE OF THE LAWS OF THE UNITED STATES
OF AMERICA (United States Code Service)

TITLE 15 -Commerce And Trade, Chapter 42
Interstate Land Sales:

Sec. 1701 et seq...Underlying purpose
of Interstate Land Sales Full Disclo-
sure Act is that prior to purchase,
buyer be informed of facts which would
enable reasonably prudent individual to
make informed decision about purchasing
property.

Sec. 1705 (12)...Information required
In Statement Of Record...such docu-
ments and certifications as the secre-
tary may require as being reasonably
necessary or appropriate for the pro-
tection of purchasers.

Sec. 1707 (a)...Information required in property report...property rept. shall also contain such other information as the Secretary may by rules or regulation require as being necessary or appropriate in the public interest or for the protection of the purchasers.

Sec. 1719...Jurisdiction of offenses and suits ...U.S. Courts.

CODE OF FEDERAL REGULATIONS

24 CFR 1710 - 1715...merits and necessities of land registration and H.U.D. (Housing Urban Development)

Sec. 1715.50 (a) ..."Obtain the property report required by Federal Law and read it before signing anything...."

STATEMENT OF THE CASE

Petitioner at all times represented himself as in pro per (pro se) since petitioner could not afford the monetary expense of an attorney or legal counsel.

Petitioner purchased fee simple land at Pine Mountain Club on December 3, 1973, and legally assumed the original existing by-laws dated May 6, 1971, and the developer's public report (State & Federal, H.U.D.) issued January 18, 1973, which were duly and legally recorded in the County.

Respondent, Pine Mountain Club Association, repeatedly changed, amended, deleted, and completely re-wrote the original by-laws of 1971 throughout the years of 1975 to present day without ever having the necessary 55% total property votes (including petitioner's) as required pursuant to the original by-laws and legal land public report.

Over the petitioner's constant verbal objections (in the court record) the trial court judge refused to admit into evidence the only valid 1971 legally assumed by-laws and the 1973 California & Federal H.U.D. land public report which were both legally assumed by the petitioner in December 1973 land purchase contracts.

Secondly the trial court judge ignored State Of California stare decisis law of the Appellate District** which held that board of directors lacked authority to modify covenants and by-laws without written consent of not less than two-thirds of all said property owners.

** Ticor Title Ins. Co., etc.
vs Rancho Santa Fe Assoc. (1986)
223 Cal Rptr 175, Cal Ap
Fourth District Div. 1
Feb. 18, 1986

Petitioner refused to pay unlawful assessment to respondent because of this breach of contract action by respondent.

Respondent further violated the covenants of the 1971 original by-laws and 1973 land public report by refusing the petitioner the following benefits and covenant rights:

- 1) Voting Rights
- 2) Use Of Facilities
- 3) Inspection Of Books/Records
- 4) Proper Fiduciary Mgmt

The trial court judge only admitted into evidence the respondents illegal, un-authenticated, unrecorded by-laws of 1982 which were never approved by the petitioner, by the petitioners two (2) witnesses, and/or 55% of the total property owners membership as required by law and the original by-laws.

The trial court judge in open court ignored the abuse and non-compliance of a lawful, legal court subpoena of a witness that was being ordered by the petitioner as an import and essential hostile witness to prove and support petitioner's complaint and case. Instead of an immediate contempt citation being ordered, the trial court judge and the respondent's female counsel went into the judges private chambers to discuss the subpoena issues. Petitioner in proper was completely ignored and not invited to participate in the "closed door" questionable discussion of subpoena law. Petitioner objected to no avail. Petitioner's subpoena hostile witness was not cited for contempt; nor ordered to appear at trial at a continued time and date. Petitioner again registered objections to no avail by

the honorable trial court judge.

The trial court judge awarded to respondent the outrageous sum of \$8,406.62 for attorney fees (not detailed & explained), and \$3,349.87 lien fees upon which the respondent seeks foreclosure of petitioner's homestead real property.

In its Opinion, the Superior Court of State Of California, Appellate Department refused to address and rule upon the relevant appeal issues of:

1. Federal, HUD, and State property public report & original by-laws.
2. Uniformity decision California stare decisis law of the Appellate District & conflicts.
3. Abuse and non-compliance of lawful, legal court subpoena for essential hostile witness.

REASONS FOR GRANTING THE WRIT

I.

DEPRIVATION AND DENIAL OF PROCEDURAL DUE
PROCESS AS IS MANDATED BY THE DUE PROCESS
CLAUSE AND CONSTITUTIONAL AMENDMENTS
V. VI. and XIV.

The FOURTEENTH AMENDMENT forbids any
state deprive "any person of life, liberty,
or property without due process of law."

In Anti-Fascist Committee v McGrath
341 U.S. 162 the court said:

"...Due process, unlike some
legal rules is not a technical
conception with a fixed content
unrelated to time, place, and
circumstances."

In Mathews v Eldridge, 424 U.S. 334,
the court said:

"...Due process is flexible and
calls for such procedural pro-
tections as the particular sit-
uation demands." Also Morrissey
v Brewer, 408 U.S. 471.

In Palko v Connecticut, 302 U.S. 319,
it was said:

"The hearing moreover must be
a real one, not a sham or a
pretense."

The fundamental requisite due process is the opportunity to be heard.

U.S.C.A. Amend 14, Mullane v Central Hanover 70 S.C. 652, 339 U.S. 306.

In Memphis Light v Craft it was stated:

"...Opportunity to present their objections."

In this instance case, Petitioner, Richard G. Kaschak, has been denied the due process by the trial courts refusal to admit into evidence:

- 1) Petitioner's assumed by-laws dated May 6, 1971.
- 2) Petitioner's assumed HUD public report dated Jan. 18, 1973.

Furthermore, the Superior Appellate Court completely ignored and refused to rule on the relevant issues of petitioner's assumed by-laws and assumed HUD public report.

The SIXTH AMENDMENT guarantees that a defendant (petitioner) is entitled to

have compulsory process for obtaining witnesses in his favor.

In *Washington v Texas*, 338 U.S. 14, the court said:

"The rights to offer the testimony of witnesses and to compel their attendance if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts...decide where the truth lies."

In *Taylor v Illinois*, 108 S.C.646, the honorable court said:

"The compulsory process clause is also grounded in the general constitutional guarantee of due process."

In *Chambers v Mississippi* 410 U.S. 284 the court stated:

"Few rights are more fundamental than that of an accused to present witnesses in his own defense."

In this instance, the Superior Appellate Court again completely ignored the third major relevant issue; that of trial court's non-compliance of peti-

tioner's subpoena served on the respondent's hostile witness.

Such is tantamount to misconduct at the trial court level; such is a sham or a pretense at the appellate level. (See *Palko v Connecticut*, supra).

Thus the facts speak for themselves that petitioner was deprived and denied procedural due process as mandated and guaranteed by the Constitutional Amendments XIV, VI, as well as due process of Amend. V guarantees.

II.

FEDERAL STATUTORY LAW IS BEING IGNORED IN THE DECISIONS BELOW THAT BRINGS CAUSE FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWERS WHICH NOT ONLY AFFECT PETITIONER BUT POSSIBLY 3,000 or MORE PROPERTY OWNERS AT THIS SAME LAND DEVELOPMENT.

The Interstate Land Sales Full Disclosure Act, 15 U.S.C.S 1701 et seq spells out the great importance of land

registration and requisite important information required in the public property report for the protection of purchasers.

Supra on pages 4 and 5, the Federal statutory provisions have been set out which reiterate the importance of the property report to purchasers to protect their future rights.

Furthermore, the Code Of Federal Regulations, 24 CFR 1710 et sqq further declares the merits and necessities of the HUD public property report. Sec. 1715.50 (a) reads:

"Obtain the property report required by Federal Law and read it before signing anything."

In this instance case the lower court absolutely refused to allow the petitioner in pro per to enter it into evidence as a most important relevant issue to prove petitioner's case.

Furthermore, the Superior Appellate Court would not even discuss the issue of relevancy or not, in spite of the Federal Statutory Provisions involved.

Lower courts need the guidance from the Supreme Court as to the importance and applicability of Federal Statutory Law which seek to protect a purchaser's (and a Petitioner's) rights of real estate property and land.

Thus the inadmissibility of Petitioner's HUD public land report is contrary and in conflict with Federal Statutory Law; both the lower court and the Appellate Court should have entered and discussed and reviewed the relevant HUD public report issue which incorporates by reference the originally assumed by-laws of May 6, 1971.

III

THERE EXISTS CONFLICTS IN PRINCIPLE AS BETWEEN THE FIFTH APPELLATE DISTRICT AND THE FOURTH APPELLATE DISTRICT IN THE CALIFORNIA COURT OF APPEAL.

In Ticor Title Insurance Company v Rancho Santa Fe, 223 Cal Rptr 175, Cal App Fourth Dist, Div 1, 1986, the board of directors lacked authority to modify the covenants and/or by-laws. No such change or modification shall be made without the written consent of not less than two-thirds of all said property owners. The board acting alone....it involves ignoring express language in the covenant and denigrating the voting rights of the property owners. We do not believe the covenanting parties intended the Board to have such unfettered powers by the process of interpretation.

Thus in this instance case, the trial court and the Appellate Court completely ignored the burden of proof showing that 55% of the total membership ever approved any by-law changes and/or amendments to make valid the 1982 by-laws admitted into evidence by the court for the respondent.

Petitioner strongly objected that the 1971 by-laws were the only valid legally assumed by-laws by the Petitioner; that such 1982 by-laws admitted into evidence were made by the directors alone without any approval or ratification of the 55% membership or vote; that never had there been a 55% membership attendance let alone a 55% vote to change by-laws.

The trial court and the appellate court should have been bound by the uniformity of the Appellate Law of

the Fourth Appellate District in the precedent case of Ticor Title Insurance v Rancho Santa Fe discussed supra.

Hopefully the United States Supreme Court will not permit the Appellate Court to ignore case law precedence for the uniformity of decision and to resolve the CONFLICT as between the appellate courts.

A writ of mandate is the appropriate remedy to direct the lower court to apply the proper law. (Murtado v Superior Court, 1974, 11 Cal 3d 574, 114 Cal Rptr 106).

Unfortunately the Fifth Appellate Court denied Petitioner's Request For Writ Of Mandate. (See App 6a)

IV

THE AIMS OF THE CONSTITUTION
ARE THE ENHANCEMENT OF THE
DIGNITY OF THE INDIVIDUAL
(Justice William J. Brennan Jr.,
"Inside The Marble Temple"
1988 Television Program)

The Constitution of the United States of America does not clearly define what is "due process" and "equal protection" as is guaranteed by the Fourteenth Amendment as is applicable to the States. That is why the SUPREME COURT OF THE UNITED STATES must at all times construe and apply causes and be on guard to protect the rights of the United States individual; so as not to be over-ridden by State or Federal government.

"The enhancement of the dignity of the individual, those were the great aims of the Constitution."

Thus petitioner in pro se contends that he is such an individual who must be protected from procedural and mis-interpretation error of the lower appellate courts.

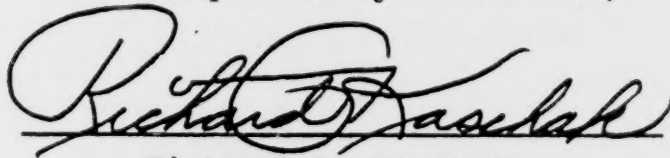
The Supreme Court's power to review over state judgments is to correct wrong judgments, not to revise opinions taking erroneous view of Federal law. *Herb v Pitcairn*, 324 U.S. 117.

There should be no dual standard of justice in the lower courts and the appellate courts just because a petitioner is in pro per, or in pro se and not represented by an attorney or highly recognized counsel of great repute.

CONCLUSION

For all of the foregoing reasons, this petition for certiorari should be granted to the petitioner in pro se. Or in the alternative, petitioner prays for summary disposition on the merits by per curiam opinion; or that the Supreme Court remand the case to the Fifth Appellate District to hear petitioner's request for writ of mandate upon all of petitioner's relevant issues as set out in the writ and in the appellate court brief.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard G. Kaschak", written in a cursive style with a horizontal line underneath.

Richard G. Kaschak
Petitioner In Pro Se
1928 Carmen Avenue
Hollywood, Calif. 90068
(213) 462-8803

DATED: June 10, 1988

APPENDIX

SUPERIOR COURT, STATE OF
CALIFORNIA, COUNTY OF KERN
APPELLATE DEPARTMENT

* * * * *

Pine Mountain Club Property Owners Association, Inc.)	
)	
Plaintiff & Respondent,	)	No.
vs.	)	A-384
Richard G. Kaschak,)	
Defendant & Appellant,)	
		Trial Ct.
Richard G. Kaschak,	)	No. CJ
Cross-Complainant	)	193
and Appellant,)	
vs.	)	OPINION
Pine Mountain Club Property)	
Owners Association, Inc.,)	
Cross-Defendant)	
adn Respondent)	

This is an appeal from a judgment of
the Maricopa-Taft Justice Court, the
Honorable Robert C. Deabenderfer,
Judge. Affirmed.

Richard G. Kaschak, in propria per-
sona, for Defendant/Cross Complainant
and Appellant.

Monteleone and McCrory, by Debra

Lambeck, for Plaintiff/Cross-Defendant and Respondent.

Respondent sought to enforce its right to foreclose a lien on Appellant's parcel of real property, alleging his failure to pay annual assessments. Appellant resisted by alleging a lack of authority to levy assessments in excess of \$50.00 per year and cross-complained asserting mismanagement and the commission of negligent and intentional torts. The trial court found in favor of Respondent on all issues.

Appellant relied upon the 1971 By-Laws, which set the \$50.00 limit and provided that the By-Laws could not be amended without the vote of 55% of the total votes of all the property owners. The trial court found that the By-Laws had been so amended in 1977 and again in 1982. Our function is to determine whether there is any substantial evidence to

support that finding. Overton vs Vita-
Food Corp., 94 C.A. 2d 367. The tes-
timony of Phyllis Morse, Respondent's
Office Manager, is sufficient in this
regard; she testified as to the amend-
ments and through her the By-laws
dated June 18, 1977, were introduced.

Appellant contends that the trial
court erred in awarding attorney fees
in the sum of \$8,406.62 in a case in
which the total amount awarded for the
unpaid liens was \$3,349.87. While at
first blush the disparity between the
two certainly seems unreasonable, a
reading of the transcript and a review
of the records of the trial court just
as certainly support the award. Respon-
dent put on its case in chief in less
than half a day. The remainder of the
case took the equivalent of two full
days. In addition, there were motions

and discovery that necessarily required Respondent's attorneys to devote more time to the case than the amount sought might otherwise justify. The amount of attorney's fees is within the sound discretion of the trial court. We find no abuse of discretion in light of the record on appeal.

Appellant contends that the trial court erred in not admitting into evidence business records, copies of which had been provided to him by Respondent through discovery. The records in question are monthly reports submitted to Respondent by an outside accountant. As noted by Respondent, Appellant made no effort to satisfy the foundational requisites of Evidence Code Sections 1271 and accordingly, they were properly refused.

Appellant raises several other contentions, which in our review of the

record are not supported as a matter of fact or law. Pursuant to People vs. Alberts, 138 Cal. App 2d Supp. 909, we decline to discuss them further.

The judgment is affirmed. Let remittitur issue.

DATED: September 10, 1987

STUART, P.J.

WE CONCUR:

RANDALL, J.

WALLACE, J.

FILED

ENDORSED

87 SEP 11 A 3:12

GALE S. ENSTAD, CLERK
KERN COUNTY, CALIF.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

Richard G. Kaschak,	)	No.
Petitioner,	)	F009838
v.	)	(Sup.Ct No.
Superior Court, Kern County	)	A-384)
Respondent,)	
Pine Mountain Club Property)	
Owner's Association,)	
Real Party in Interest.)	

BY THE COURT: *

The petition for writ of mandate, prohibition, or other appropriate relief is denied. In case No. F009566 on Dec. 22, 1987, this court denied a petition that was in all significant respects identical with the petition in the instant case.

Date: Feb. 5, 1988

____ P.J.

*Before Franson, P.J., Woolpert, J.,
and Ardaiz, J.

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
5th District, No. F009838
S004205

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

IN BANK

Kaschak, Petitioner,

v

Superior Court Of The County Of Kern,
Respondent;
Pine Mountain Club Property Owners Assoc.,
Real Party in Interest.

Petitioner's petition for review
DENIED.

LUCAS
Chief Justice

SUPREME COURT FILED: March 16, 1988
Laurence P. Gill, Clerk, Deputy

No. 87-2106



IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1988

RICHARD G. KASCHAK,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN

Respondent,

PINE MOUNTAIN CLUB, PROPERTY
OWNERS ASSOCIATION

Real Party
In Interest.

PETITIONER'S REPLY TO
BRIEF IN OPPOSITION

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August 18, 1988

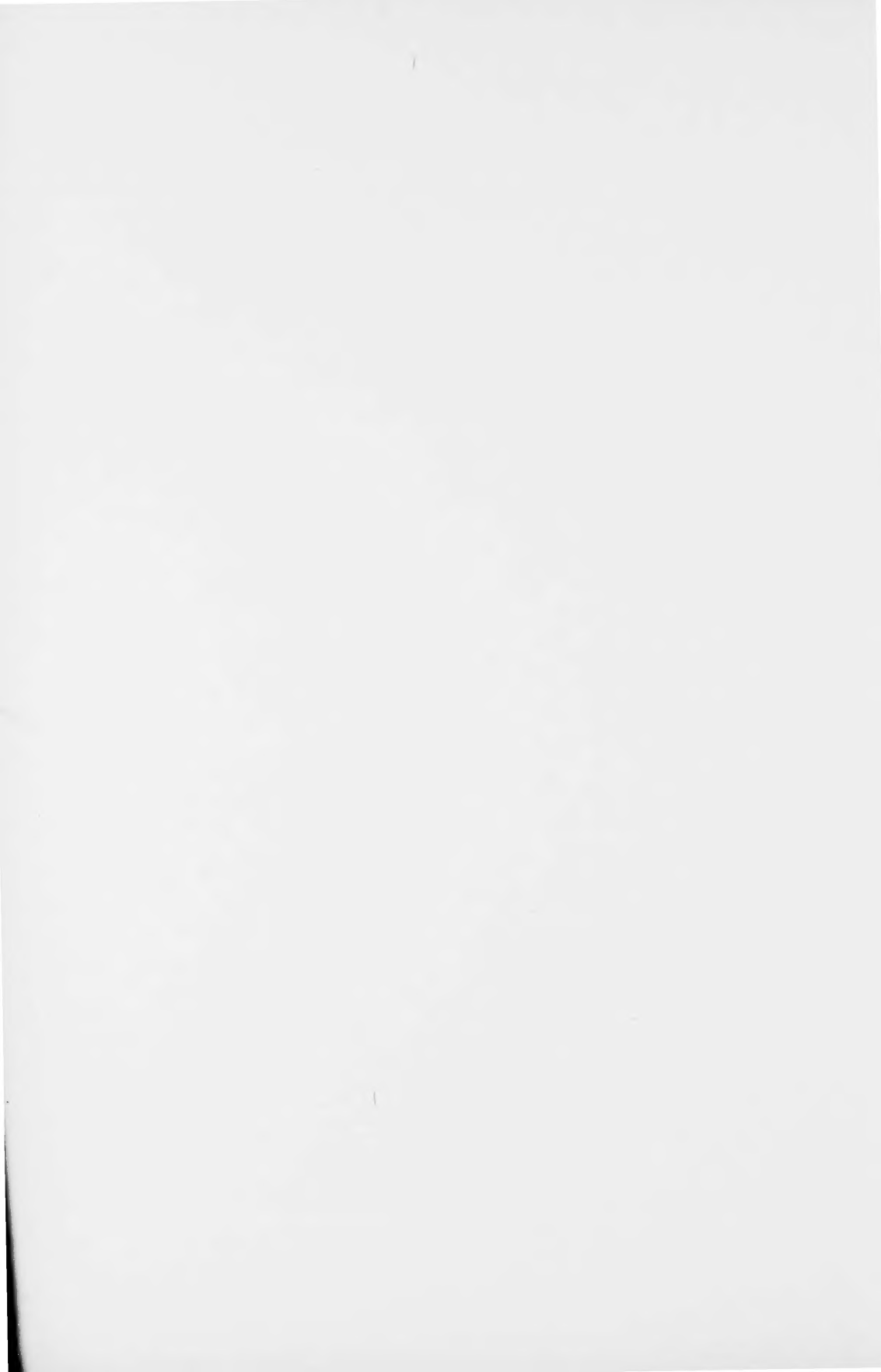


TABLE OF CONTENTS

	<u>Page</u>
PETITIONER'S RESPONSES AND ARGUMENT PRESENTED.	1
I. RESPONDENT ADMITS THAT HIS EXHIBITS ARE NOT TRUTHFUL.	2
II. JUSTICE COURT JURISDIC- TION IS NOT IN CONFORM- ANCE WITH CALIF. CODE OF CIVIL PROCEDURE SEC. 86.....	3
III. CONTRACTUAL OBLIGATION SUIT MUST BE BASED ON LAWFUL LEGAL DOCUMENTS FOR PROPER RATIO DECIDENDE.	4
IV. \$50.00 ASSESSMENT IS MINOR ISSUE OF PLEADINGS; TESTIMONY OF OFFICE MGR. (MORSE) WAS REBUTTED BY TWO VALID PROPERTY OWNER WITNESSES....	5
V. ARCHAIC STANDARDS OF REVIEW ARE SUGGESTED BY RESPONDENT; ONLY NEW ISSUE ON APPEAL BY KASCHAK (PETITIONER) WAS JUSTICE COURT NON-COMPLIANCE OF LAWFUL, LEGAL COURT SUB- POENA AND VIOLATION OF DUE PROCESS.	7
VI. PETITIONER'S FINAL ARGUMENT.	11
CONCLUSION.....	12

	<u>Page</u>
PROOF OF SERVICE.....	

APPENDIX:

Declaration Covenants, Conditions And Restrictions (1971) (excerpt)..	1a
--	----

By-Laws Of Pine Mt. Club Property Owner's Assoc. (1971) (excerpt)....	2a
--	----

Dept. Of Real Estate Of State Of Calif. Public Report (1973)(excerpt)	3a
--	----

Pine Mountain Club Publication, The Condor (1988) (excerpt).....	4a
---	----

TABLE OF AUTHORITIES

Cases:

Palko v. Connecticut 302 U.S. 319.....	9
Schweiger v. Superior Court (1970) 3 Cal 3d 507 90 Cal Rptr 729.....	8
Ticor Title Ins. Co. v. Rancho Santa Fe, (1986) 223 Cal Rptr 175.	9,10

UNITED STATES CONSTITUTIONAL AMENDMENTS V, VI, XIV.....	2, 8
Calif. Code Of Civil Procedure, Sec. 86 (a) (1).....	3

No. 87-2106

IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1988

RICHARD G. KASCHAK,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN

Respondent,

PINE MOUNTAIN CLUB, PROPERTY
OWNERS ASSOCIATION

Real Party
In Interest.

RESPONSES & ARGUMENT PRESENTED

Respondent's brief in opposition was received August 12, 1988, and it circumvents all of the relevant and material constitutional questions presented in petitioner's petition for writ of certiorari.

Petitioner, Kaschak, hereby categorically replies to respondent's brief in opposition:

I.

RESPONDENT ADMITS THAT
HIS EXHIBITS ARE NOT
TRUTHFUL

Kaschak agrees that Respondent's Exhibit B, (1977 By-Laws) and Exhibit C, (1982 By-Laws) are not truthful, valid, and legal. Thus respondent's court is basing and giving judgment on fraudulent un-authenticated documents; thereby depriving Kaschak of his home and homestead property based on untruthful exhibits.

Thus such procedural, prejudicial conduct is violative of the basic constitutional rights of due process and equal protection as guaranteed by the U. S. Constitutional Amendments V, VI, and XIV.

II.

JUSTICE COURT JURISDIC-
TION IS NOT IN CONFORM-
ANCE WITH CALIF. CODE OF
CIVIL PROCEDURE SEC. 86

Calif. Code of Civil Procedure
Sec. 86 (a) (1) further states:

....."except cases which involve
the legality of any tax, impost,
assessment.....if the
legality of the tax is not con-
tested by the defendant."

Kaschak does challenge the legal-
ity of this assessment because Pine
Mt. Club has breached the 55% total
membership requirement of the CC&R's
dated 1971 (SEE EXHIBIT I); the orig-
inal By-Laws dated 1971 (SEE EXHIBIT II),
and Public Report (HUD) issued 1973
(SEE EXHIBIT III).

III.

CONTRACTUAL OBLIGATION SUIT
MUST BE BASED ON LAWFUL LEGAL
DOCUMENTS FOR PROPER RATIO
DECIDENDE.

Respondent's Exhibit "A", CC&R's dated 1971, is a lawful, legal contractual document. Such is affirmed by Kaschak in EXHIBIT I, excerpt Sec. 27 attached hereto in appendix.

However, the ORIGINAL by-laws are not respondent's Exhibit "B". The ORIGINAL by-laws are dated May 6, 1971, Kaschak EXHIBIT II, excerpt attached hereto in appendix.

Kaschak purchased land in 1973 as respondent affirms; the original by-laws of 1971, the CC&R's of 1971, and the Public Subdivision Report (HUD) of 1973 were all legally assumed and taken over by Kaschak.

Page 6 of Respondent's brief stating Exhibit "B" June 1977 by-laws as ORIGINAL

is misleading and fraudulent and was never assumed and/or approved by Kaschak or 55% total property owners (of which there are approx. 3,000+).

Respondent court ignored Federal law and prima facie evidence of Federal HUD, (Housing Urban Development) and California Public Report dated 1973. These are all contractual obligations upon which Kaschak bases lawsuit defense; must be entered into evidence for trial court and appellate court for proper ratio decidende.

IV.

\$50.00 ASSESSMENT IS MINOR
ISSUE OF PLEADINGS; TESTIMONY
OF OFFICE MGR. (MORSE) WAS
REBUTTED BY TWO VALID PROPERTY
OWNER WITNESSES.

Kaschak did in fact pay \$50.00 assessment pursuant to 1971 by-laws; such proper increases pursuant to proper fiduciary management. However, Pine

Mountain Club breached the CC&R's and the 1971 by-laws; denied Kaschak the benefits of the covenants (voting rights, use of facilities, proper fiduciary management) and demanded the burden of the covenants of dues assessments. Kaschak then ceased dues!

The court transcript clearly sets out that Pine Mt. Club witness, office manager Phyllis Morse was only employed in July 1979. How could such employee know about the original 1971 by-laws, and a supposed 1977 unlawful amendment change and/or revision? How could a supposed impartial justice court consider Phyllis Morse testimony as valid to authenticate valid 1971-1977 by-law amendments? Procedural error!

Kaschak's rebuttal witnesses were property owners of record (Charmaine Sullivan and Marvin Steele) who testi-

fied in open court that they had never voted and/or been notified concerning amendments to the 1971 by-laws; nor had they received any other by-laws than those 1971 by-laws which were notarized and duly recorded thereto.

Pine Mt. Club could produce no property owner witnesses (out of a potential 3,000+) who could vouch that a 55% total property owner membership voted for the 1977 and/or 1982 by-laws.

V.

ARCHAIC STANDARDS OF REVIEW
ARE SUGGESTED BY RESPONDENT;
ONLY NEW ISSUE ON APPEAL BY
KASCHAK WAS JUSTICE COURT
NON-COMPLIANCE OF LAWFUL,
LEGAL COURT SUBPOENA AND
VIOLATION OF DUE PROCESS

Respondent's 1955 and 1957 ancient law citations of People v Albers and Roth v United States are criminal

misdemeanor cases of lewd conduct and obscenity, and cannot be compared to the deprivation of a United States citizen and veteran's homesteaded real property in violation of constitutional due process and equal protection as guaranteed by the United States Constitution and Amendments V, VI, & XIV.

Petitioner cites *Schweiger v Superior Court* (1970) 3 Cal 3d 507, 90 Cal Rptr 729 which held that denial of a fair hearing on the merits of the case constituted an abuse of discretion.

In this instance case, the trial justice court completely ignored the abuse and non-compliance of a lawful, legal court subpoena of a witness that was being ordered by the petitioner as an important and essential hostile witness to prove and support petitioner's complaint and case. The trial court

judge and Pine Mountain Club female counsel went into "closed door" conference; ignoring and not inviting Kaschak, as petitioner in pro per to participate in the subpoena non-compliance ruling by the court. Was this a fair hearing for a petitioner and U.S. citizen in pro per who could not afford the services of a paid atty?

In *Palko v Connecticut*, 302 U.S. 319, it was held:

"The hearing moreover must be a real one, not a sham or a pretense"

Petitioner, Kaschak, further cites *Ticor Title Ins. Co. v Rancho Santa Fe* (1986) 223 Cal Rptr 175, a more recent Cal App Fourth Dist case which held that the board of directors of a property owners association lacked authority to modify the covenants and by-laws without the written consent of

not less than two-thirds of all said property owners. The board acting alone was denigrating the voting rights of the property owners.

Thus a proper standard of review to be employed should have been the above cited more recent cases applicable to Kaschak's circumstances; not archaic law of obscenity cases.

Furthermore, respondent's conclusion on page 16 of brief:

...."Kaschak apparently contended the dues were an "assessment" in the sense of being a tax or levy....."

Such is a blatant mis-statement of the facts and is nowhere to be found in reporter's transcript. Respondent is attempting to mis-characterize the basic issues of procedural due process and uniformity decision California stare decisis law precedence as discussed supra in Ticor Title Ins. Co.

VI.
PETITIONER'S FINAL
ARGUMENT

Pine Mt. Club Association publication (The Condor) is boasting foreclosure upon 45 property owners lots based upon the above discussed illegal, fraudulent by-laws. Furthermore this publication is stating that the case of Kaschak vs Pine Mt. Club lawsuit was decided in favor of Pine Mt. Club in the State Supreme Court of Calif. when in fact petitioner's petition for review was denied and never heard by the states highest court.

(SEE ATTACHED EXHIBIT IV, page 4a)

Pine Mt. Club is also attempting to invalidate Petitioner (Kaschak's) valid homestead declaration so that the respondent and its manipulating counsel can profit from the loss of

such U.S. Army veteran's lawful homesteaded home.

There are approximately 3,000+ property owners at Pine Mt. Club who could face such possible threat of foreclosure; invalidation of citizen's homestead declaration unless the Supreme Court of the United States compels review as to the validity of the 1977 by-laws; the 55% total membership vote is confirmed. Local justice courts are prejudiced in favor of Pine Mt. Club socializing & friends.

CONCLUSION

GOD willing, and petitioner requesting that the Supreme Court Of The United States will grant pro se petitioner's petition for a writ of certiorari based on the following constitutional due process & equal rights violations of:

1. Ignoring Federal statutory law by refusing to admit into evidence the 1973 Public Report (HUD).

2. Foreclosing on a veteran's homestead property without admitting into evidence the assumed original 1971 by-laws, and proving that there was a valid, legal 1977 by-law change approved by 55% total membership requirement of CC&R's, By-Laws, and Public Report.

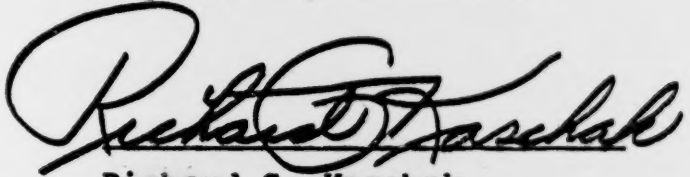
3. Applying appellate district stare decisis law precedence.

4. Misconduct and procedural error pertaining to legal court subpoena and compulsory compliance & process for obtaining witnesses.

5. Protecting the dignity of pro se litigants from court abuse and procedural and prejudicial error.

The time is "ripe" for pro se
litigation justice.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Richard G. Kaschak". The signature is written over a horizontal line.

Richard G. Kaschak
Petitioner In Pro Se
1928 Carmen Avenue
Hollywood, Calif. 90068
(213) 462-8803

DATED: August 18, 1988

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, DOROTHY KOPPELMAN, declare:

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of 18 years and not a party to the within entitled action. My address is 1928 Carmen Avenue, Apt # 7, Hollywood, Calif. 90068.

On August 19, 1988, I served the within PETITIONER'S REPLY TO BRIEF IN OPPOSITION on the interested parties in said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the U.S. mail at Hollywood, California, addressed as follows:

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF KERN (A-384)
ATT: Robert D. Woods, Atty
1415 Truxtun Avenue
Bakersfield, Calif. 93301

TAFT-MARICOPA JUSTICE COURT (CJ 193)
311 Lincoln Street
P.O. Box RR
Taft, Calif. 93266

CALIF. COURT OF APPEAL
FIFTH APPELLATE DISTRICT (F00938)
Rm 5002, State Bldg.
2550 Mariposa Street
Fresno, Calif. 93721

CALIF. SUPREME COURT (S 004205)
100 Library & Cts Bldg
Sacramento, Calif. 95814

MONTELEONE & MC CRORY
ATT: Debra Tilson Lambeck, Atty
10 Universal City Plaza, Ste 2500
Universal City, Calif. 91608-7806

I declare the foregoing to be
true and correct under penalty of
perjury.

EXECUTED on August 19, 1988, at
Hollywood, California.

Dorothy Koppelman
Dorothy Koppelman

APPENDIX

DECLARATION COVENANTS, CONDITIONS,
AND RESTRICTIONS
TRACT NO. 3402 PINE MOUNTAIN CLUB

THIS DECLARATION made this 28th day of
April, 1971 by PINE MOUNTAIN CLUB, INC.,
a Calif. corporation, hereinafter called
"declarant".

.....

.....

27. Except as otherwise provided herein,
the provisions of these restrictions may
be amended by an instrument in writing
signed and acknowledged by record owners
having fifty-five (55) per cent of the
total lot ownership subject hereunder....

.....

*** NOTE: PLAINTIFF'S EXHIBIT 1
Justice Court Case CJ 193

also: EXHIBIT "A"
RESPONDENT'S BRIEF IN
OPPOSITION
Supreme Ct. Case 87-2106

EXHIBIT I

**

BY-LAWS OF
PINE MOUNTAIN CLUB PROPERTY OWNERS ASSOC.

ARTICLE IX

Section 2. These By-Laws may only be amended or repealed, and new By-Laws adopted by the members having at least fifty-five percent(55%) of the total votes of the membership approving such amendment or repeal.

Certificate of Secretary

.....the above and foregoing By-Laws were adopted by the Board Of Directors of said Association on this 6th day of May, 1971, and that they now constitute said By-Laws.

Secretary

**NOTE: DEFENDANT'S EXHIBIT
marked "L" in Justice Court
Case CJ 193

EXHIBIT II

**

DEPARTMENT OF REAL ESTATE OF THE
STATE OF CALIFORNIA

Robert W. Karp, Real Estate Commissioner
PINE MOUNTAIN CLUB INC.
TRACT NO. 3567

FINAL SUBDIVISION PUBLIC REPORT
ISSUED January 18, 1973
EXPIRES January 17, 1978

MANAGEMENT AND OPERATION

.....The
provisions of any documents relating to
management and operation may not be
amended without the vote or written
approval of at least 55% of the total
votes.

**NOTE: DEFENDANT'S EXHIBIT
marked "V" in Justice Court
Case CJ 193

PINE MOUNTAIN CLUB

The CONDOR

Vol 11 No 1 Aug-Sept. 1988

Chief Operating Officer's Report

.....

...At this time we have 53 current delinquent owners, 45 lots in foreclosure, 10 may not be collectable due to bankruptcy.

.....The one remaining case of Kaschak vs PMCPOA was decided in favor of PMCPOA in the State Supreme Court, and we are now trying to collect the substantial judgement that was awarded POA.

.....

by: Mel McColloch, Chief Operating
Officer.

EXHIBIT IV